IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4538 of 2003

Dattatraya Ramchandra Deshmukh .. Petitioner

versus

Pushpa Vasant Mane & Ors. .. Respondents

...

Mr.N.J. Patil for the petitioner.

Mr.Dilip Bodake for respondent no.1.

CORAM : D.G. KARNIK, J

DATED : 23rd April 2007.

P.C.:

1. While issuing notice to the respondents this Court by an order dated 22nd July 2003 directed that the Writ Petition be disposed of finally at the admission stage itself. Accordingly, it is heard finally.

2. Heard counsel for the petitioner and respondent no.1.

3. Respondent no.2 and 4 to 9 are served and are absent. Counsel for the parties state that the respondent no.1 was the original plaintiff and respondent nos.2 to 9 are not contesting the petition. Hence, issuance of Rule to respondent no.2 and respondent nos.4 to 9 is dispensed with and respondent no.3 is deceased.

4. This Writ Petition is directed against the judgement and order dated 1st July 2003 passed by learned Addl. District Judge, Satara rejecting the application for condonation of a delay in filing of a Revision Petition by the petitioner.

5. The delay in question is about three years and six months. Counsel for the petitioner states that the reason for the delay is that the advocate for the petitioner did not inform him the date of hearing nor did he inform the decision. The petitioner was therefore not aware of the decision and therefore, could not file the revision petition earlier. The fact that the petitioner’s advocate did not inform him the date nor did he inform the decision is not disputed before me. In the

circumstances, in my view, the delay ought to have been condoned. Counsel for the respondent no.1 also did not seriously canvass that the delay should not have been condoned. but submitted that prejudice is being caused to him by grant of interim stay to execution of a decree in this Writ Petition. In my view since the stay was only during pendency of the Writ Petition it would automatically come to an end on decision of the Writ Petition. It is however open to the petitioner to apply for stay before the District Judge who would consider the application if made to it, on its own merits.

6. In the circumstances, Writ Petition is allowed and the impugned order is set aside. The delay in filing of the Revision Petition before the District Court stands condoned. The District Court shall hear the Revision Petition on its own merits. Petitioner shall pay to the respondent costs of the petition which are quantified at Rs.5,000/- within 8 weeks failing which the Writ Petition shall stand dismissed.

(D.G. KARNIK, J)